

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
CRIMINAL APPELLATE JURISDICTION.**

Criminal Writ Petition No.519 Of 2014.

Pradnya Sandesh Gaikwad.
Age : 40 Years., Occ.: Advocate.
R/o.: Postal Colony, Burhanpur,
Taluka & District – Ahmednagar.



Petitioner.

Versus

(1) Sandesh Shankar Gaikwad.
Age : 46 Years., Occ.: Service.

(2) Sunita Shankar Gaikwad.
Age : 52 Years., Occ.: Service.

Both R/o.: Buddha Ghos
Housing Society, Sangvi,
Pune – 27.

(3) The State of Maharashtra. ::



Respondents.

Appearance =>

Mr. Vinayak Bedre, Advocate for the Petitioner.

Mr. S.A. Kulkarni, Advocate for Respondent Nos. 1 and 2.

Mr. V.H. Dighe, Additional Public Prosecutor for the State of
Maharashtra – Respondent No.3.

CORAM : V.M. DESHPANDE, J.

DATE : 10th August, 2015.

ORAL JUDGMENT :-

Rule. Rule made returnable forthwith. With consent of learned counsel for the parties, Writ Petition is taken up for final hearing.

[2] By the present Writ Petition, the Petitioner – wife is challenging the concurrent findings of fact recorded by both the courts below in respect of house in question is not shared house and, therefore, she is not entitled for the right of residence.

[3] Heard Mr. Vinayak Bedre, learned counsel for the Petitioner, Mr. S.A. Kulkarni, learned counsel for Respondent Nos. 1 and 2 and Mr. V.H. Dighe, learned Additional Public Prosecutor for Respondent No.3.

[4] The Petitioner preferred application under Section 12 of the Protection Of Women From Domestic Violence Act, 2005. Said proceedings – Criminal M.A.No.368 Of 2007 was partly allowed by the learned Judicial Magistrate, F.C., Court No.III, Ahmednagar on 30th August, 2011. The learned Magistrate directed that the Respondents do pay monthly maintenance @ Rs.1500/- to the Petitioner from the date of order. However, the learned trial court rejected the claim of the Petitioner for residence.

[5] Being dis-satisfied by the said Judgment and Order, the Petitioner has preferred Criminal Appeal No.144 Of 2011. The learned Additional Sessions Judge, Ahmednagar vide his Judgment and Order dated 6th March, 2014 partly allowed the Criminal Appeal preferred on behalf of the wife and enhanced the amount of maintenance allowance from Rs.1500/- per month to Rs.2500/- per month from the date of order i.e. 30th August, 2011. However, the learned appellate court also rejected the claim of the wife in respect of residence.

[6] The pleadings and evidence brought on record by the parties clearly show that wife was unable to prove the nature of the house. According to the concurrent findings recorded by the courts below, house in question is exclusive property of the father in law of the present Petitioner.

[7] Wife was unable to point out anything contrary before this court, in that behalf. Therefore, I see no reason to disturb the findings of fact recorded by the courts below, in my limited writ jurisdiction; since no perversity is crept in, in any of the orders impugned. In so far as order of maintenance is concerned, in my view, both the courts below committed error in granting maintenance allowance from the date of order.

[8] Once the wife successfully demonstrates that she is entitled to claim maintenance allowance and she was required to

approach before the court for claiming her right of maintenance allowance, both the courts below ought to have granted the maintenance allowance from the date of application, instead of from the date of order. That leads me to pass the following order :-

ORDER

- (i) Criminal Writ Petition is partly allowed.
- (ii) The Judgment and Order dated 6th March, 2014 passed by the learned Additional Sessions Judge, Ahmednagar in Criminal Appeal No.144 Of 2011 granting maintenance allowance @ Rs.2500/- from the date of order is modified. The Petitioner shall be entitled to receive monthly maintenance allowance @ Rs.2500/- from the date of application.
- (iii) Other observations and order passed by the learned Additional Sessions Judge, stands confirmed.
- (iv) Rule is made absolute in above terms.
- (v) No costs.
- (vi) With this Criminal Writ Petition is partly allowed and same is disposed of accordingly.

(V.M. DESHPANDE, J.)